

SECOND REGULAR SESSION

# SENATE BILL NO. 599

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHEELER.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3758S.011

## AN ACT

To amend chapter 334, RSMo, by adding thereto one new section relating to joint negotiations of physicians.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 334, RSMo, is amended by adding thereto one new  
2 section, to be known as section 334.300, to read as follows:

**334.300. 1. As used in this section the following terms mean:**

2 (1) "Carrier", an insurance company, health service corporation,  
3 hospital service corporation, medical service corporation, or health  
4 maintenance organization which is authorized to issue health benefits  
5 plans in this state;

6 (2) "Covered person", a person on whose behalf a carrier offers  
7 health benefits, is obligated to pay benefits, or provides services  
8 pursuant to the plan;

9 (3) "Covered service", a health care service provided to a covered  
10 person under a health benefits plan for which the carrier is obligated  
11 to pay benefits or provide services;

12 (4) "Health benefits plan", a plan which pays or provides hospital  
13 and medical expense benefits for covered services, and is delivered or  
14 issued for delivery in this state by or through a carrier. For the  
15 purposes of this section, health benefits plan shall not include the  
16 following plans, policies, or contracts: Medicare supplement coverage  
17 and risk contracts, accident only, specified disease or other limited  
18 benefit, credit, disability, long-term care, CHAMPUS supplement  
19 coverage, coverage arising out of a workers' compensation or similar  
20 law, automobile medical payment insurance, personal injury protection  
21 insurance issued pursuant to chapter 303, RSMo, dental or vision care

22 coverage only, or hospital expense or confinement indemnity coverage  
23 only;

24 (5) "Joint negotiation representative", a representative selected  
25 by two or more independent physicians to engage in joint negotiations  
26 with a carrier on their behalf;

27 (6) "Physician", a person who is currently licensed to practice  
28 medicine and surgery by the state pursuant to this chapter;

29 (7) "Utilization management", a system for reviewing the  
30 appropriate and efficient allocation of health care services under a  
31 health benefits plan in accordance with specific guidelines, for the  
32 purpose of determining whether, or to what extent, a health care  
33 service that has been provided or is proposed to be provided to a  
34 covered person is to be covered under the health benefits plan.

35 2. Two or more independent physicians who are practicing in the  
36 service area of a carrier may jointly negotiate with a carrier and  
37 engage in related joint activity, as provided in this section, regarding  
38 non-fee-related matters which may affect patient care, including, but  
39 not limited to, any of the following:

40 (1) The definition of medical necessity and other conditions of  
41 coverage;

42 (2) Utilization management criteria and procedures;

43 (3) Clinical practice guidelines;

44 (4) Preventive care and other medical management policies;

45 (5) Patient referral standards and procedures, including, but not  
46 limited to, those applicable to out-of-network referrals;

47 (6) Drug formularies and standards and procedures for  
48 prescribing off-formulary drugs;

49 (7) Quality assurance programs;

50 (8) Respective physician and carrier liability for the treatment  
51 or lack of treatment of covered persons;

52 (9) The methods and timing of payments;

53 (10) Other administrative procedures, including, but not limited  
54 to, eligibility verification systems and claim documentation  
55 requirements for covered persons;

56 (11) Credentialing standards and procedures for the selection,  
57 retention, and termination of participating physicians;

58 (12) Mechanisms for resolving disputes between the carrier and

59 physicians, including, but not limited to, the appeals process for  
60 utilization management and credentialing determinations;

61 (13) The health benefits plans sold or administered by the carrier  
62 in which the physicians are required to participate;

63 (14) The formulation and application of reimbursement  
64 methodology;

65 (15) The terms and conditions of physician contracts, including,  
66 but not limited to, all products clauses, and the duration and renewal  
67 provisions of the contract; and

68 (16) The inclusion or alteration of a contractual term or  
69 condition, except when the inclusion or alteration is required by a  
70 federal or state regulation concerning that term or condition; however,  
71 the restriction shall not limit a physician's rights to jointly petition the  
72 federal or state government, as applicable, to change the regulation.

73 3. (1) Upon a finding by the attorney general, in consultation  
74 with the directors of the department of insurance and the department  
75 of health and senior services, that the carrier has substantial market  
76 power in its service area and that any of the terms or conditions of the  
77 contract with the carrier pose an actual or potential threat to the  
78 quality and availability of patient care among covered persons, two or  
79 more independent physicians who are practicing in the service area of  
80 a carrier may jointly negotiate with the carrier and engage in related  
81 joint activity, as provided in this section regarding fees and fee-related  
82 matters, including, but not limited to, any of the following:

83 (a) The amount of payment or the methodology for determining  
84 the payment for a health care service, including but not limited to, cost-  
85 of-living increases;

86 (b) The conversion factor for a resource-based relative value  
87 scale or similar reimbursement methodology for health care services;

88 (c) The amount of any discount on the price of a health care  
89 service;

90 (d) The procedure code or other description of a health care  
91 service covered by a payment and the appropriate grouping of the  
92 procedure codes;

93 (e) The amount of a bonus related to the provision of health care  
94 services or a withholding from the payment due for a health care  
95 service; and

96 (f) The amount of any other component of the reimbursement  
97 methodology for a health care service.

98 (2) The department of insurance, in consultation with the  
99 department of health and senior services, shall have the authority to  
100 collect and investigate such information as it reasonably believes is  
101 necessary to determine, on an annual basis:

102 (a) The average number of covered lives and geographical  
103 distribution of covered lives per quarter per county for every carrier  
104 in the state; and

105 (b) The impact of the provisions of this section on average  
106 physician fees in the state.

107 The department of insurance shall provide this information to the  
108 attorney general on an annual basis.

109 (3) The attorney general shall make the determination of what  
110 constitutes substantial market power for the purposes of subdivision  
111 (1) of this subsection.

112 4. The exercise of joint negotiation rights by two or more  
113 independent physicians who are practicing in the service area of a  
114 carrier pursuant to this section shall conform to the following criteria:

115 (1) The physicians may communicate with each other concerning  
116 any contractual term or condition to be negotiated with the carrier,  
117 provided that communications relating to fees and fee-related matter  
118 shall not commence until a petition for joint negotiation pursuant to  
119 subsection 6 of this section is submitted to and approved by the  
120 attorney general;

121 (2) The physicians may communicate with the joint negotiation  
122 representative authorized to negotiate on their behalf with the carrier  
123 concerning any contractual term or condition;

124 (3) The joint negotiation representative shall be the sole party  
125 authorized to negotiate with the carrier on behalf of the physicians as  
126 a group;

127 (4) The physicians may, at the option of each physician, agree to  
128 be bound by the terms and conditions negotiated by the joint  
129 negotiation representative; and

130 (5) When communicating or negotiating with a joint negotiation  
131 representative, a carrier may offer different contractual terms or  
132 conditions to, or may contract with, individual independent physicians.

133           **5. The provisions of this section shall not apply to a health**  
134 **benefits plan which is certified by the director of the department of**  
135 **health and senior services to the attorney general as providing covered**  
136 **services exclusively or primarily to persons who are eligible for public**  
137 **medical assistance under chapter 208, RSMo.**

138           **6. A person or entity which proposes to act as a joint negotiation**  
139 **representative shall satisfy the following requirements:**

140           **(1) Before entering into negotiations with a carrier on behalf of**  
141 **two or more independent physicians, the joint negotiation**  
142 **representative shall submit to the attorney general, for his approval**  
143 **pursuant to subsection 7 of this section, on a form and in a manner**  
144 **prescribed by the attorney general, a petition which identifies:**

145           **(a) The representative's name and business address;**

146           **(b) The names and business addresses of each physician who will**  
147 **be represented by the identified representative;**

148           **(c) The ratio of the physicians requesting joint representation to**  
149 **the total number of physicians who are practicing within the**  
150 **geographic service area of the carrier;**

151           **(d) The carrier with which the representative proposes to enter**  
152 **into negotiations on behalf of the identified physicians;**

153           **(e) The intended subject matter of the proposed negotiations**  
154 **with the identified carrier;**

155           **(f) The representative's plan of operation and procedures to**  
156 **ensure compliance with the provisions of this section;**

157           **(g) The anticipated effect of the proposed joint negotiations on**  
158 **the quality and availability of health care among covered persons;**

159           **(h) The anticipated benefits of a contract between the identified**  
160 **physicians and carrier;**

161           **(i) Such other data, information, and documents as the**  
162 **petitioners desire to submit in support of their petition; and**

163           **(j) Such other data, information, and documents as the attorney**  
164 **general deems necessary.**

165 **The joint negotiation representative, upon submitting the petition,**  
166 **shall pay a fee to the attorney general in an amount, as determined by**  
167 **the attorney general, which shall be reasonable and necessary to cover**  
168 **the costs associated with carrying out the provisions of this section.**

169           **(2) After the joint negotiation representative and the carrier**

170 identified pursuant to subdivision (1) of this subsection have reached  
171 an agreement on the contractual terms or conditions that were the  
172 subject matter of their negotiations, the joint negotiation  
173 representative shall submit to the attorney general, for his approval in  
174 accordance with the provisions of subsection 7 of this section, a copy  
175 of the proposed contract between the physicians identified pursuant to  
176 subdivision (1) of this subsection and the carrier, as well as any plan  
177 of action which the joint negotiation representative and the carrier  
178 may formally agree to for the purpose of implementing the terms and  
179 conditions of the contract.

180 (3) Within fourteen days after either party notifies the other  
181 party of its decision to decline or terminate negotiations entered into  
182 pursuant to this section, or after the date that a joint negotiation  
183 representative requests that a carrier enter into such negotiations to  
184 which request the plan fails to respond, the joint negotiation  
185 representative shall report to the attorney general that the negotiations  
186 have ended, on a form and in a manner to be prescribed by the attorney  
187 general. The joint negotiation representative may resume negotiations  
188 with the carrier no later than sixty days after reporting to the attorney  
189 general that the negotiations have ended, on the basis of the petition  
190 submitted to the attorney general pursuant to subdivision (1) of this  
191 subsection and approved by the attorney general in accordance with  
192 the provisions of subsection 7 of this section. After that date, the joint  
193 negotiation representative shall be required to submit a new petition  
194 and pay an additional fee to the attorney general pursuant to  
195 subdivision (1) of this subsection, in order to engage in negotiations  
196 with the carrier under this section.

197 7. (1) The attorney general shall provide written approval or  
198 disapproval of a petition or a proposed contract furnished by a joint  
199 negotiation representative pursuant to subsection 6 of this section no  
200 later than thirty days after receipt of the petition or proposed contract,  
201 as applicable. If the attorney general fails to provide written approval  
202 or disapproval within this time period, the joint negotiation  
203 representative may petition a court of competent jurisdiction for an  
204 order to require the attorney general to take such action. For good  
205 cause shown, the court may grant the attorney general additional time  
206 to approve or disapprove the petition or proposed contract.

207           (2) A joint negotiation representative shall not engage in  
208 negotiations with a carrier over any contractual term or condition  
209 unless the petition furnished by the joint negotiation representative  
210 has been approved in writing by the attorney general, nor shall a  
211 proposed contract between two or more independent physicians and a  
212 carrier be implemented unless the attorney general has approved the  
213 contract.

214           (3) The attorney general shall approve a petition or a proposed  
215 contract furnished by a joint negotiation representative pursuant to  
216 subsection 6 of this section if the attorney general determines that the  
217 petition or proposed contract demonstrates that the benefits which are  
218 likely to result from the proposed joint negotiations over a contractual  
219 term or condition or the proposed contract, as applicable, outweigh the  
220 disadvantages attributable to a reduction in competition that may  
221 result from the proposed joint negotiations. If the attorney general  
222 approves a petition or a proposed contract, he shall make written  
223 findings to this effect. If the attorney general disapproves the petition  
224 or the proposed contract, he shall forward a written explanation of any  
225 deficiencies therein to the joint negotiation representative along with  
226 a statement of the specific remedial measures by which those  
227 deficiencies may be corrected.

228           (4) In making his determination, the attorney general shall  
229 consider:

230           (a) Physician distribution by specialty and its effect on  
231 competition in the geographic service area of the carrier;

232           (b) The market power of the carrier and the goal of restoring or  
233 maintaining competitive balance in the market for health care services;

234           (c) Protections for access to quality patient care; and

235           (d) The potential for the escalation of the cost of providing  
236 health care services.

237           (5) The attorney general's written approval of a petition which  
238 is furnished by a joint negotiation representative under subsection 6  
239 of this section shall be effective for all subsequent negotiations between  
240 the joint negotiation representative and the identified carrier, subject  
241 to the provisions of subdivision (3) of subsection 6 of this section.

242           (6) In the case of a petition submitted pursuant to subdivision (1)  
243 of subsection 6 of this section, the attorney general shall notify the

244 carrier of the petition and provide the carrier with the opportunity to  
245 submit written comments within a specified time frame that does not  
246 extend beyond the date by which the attorney general is required to act  
247 on the petition.

248 8. (1) Within thirty days from the mailing by the attorney  
249 general of a notice of disapproval of a petition submitted under  
250 subdivision (6) of this subsection, the petitioners may make a written  
251 application to the attorney general for a hearing.

252 (2) Upon receipt of a timely written application for a hearing,  
253 the attorney general shall schedule and conduct a hearing. The hearing  
254 shall be held within thirty days of the application unless the petitioner  
255 seeks an extension.

256 (3) The sole parties with respect to any petition under subsection  
257 6 of this section shall be the petitioners, and notwithstanding any other  
258 provision of law to the contrary, the attorney general shall not be  
259 required to treat any other person as a party and no other person shall  
260 be entitled to appeal the attorney general's determination.

261 9. All information, including documents and copies thereof,  
262 obtained by or disclosed to the attorney general or any other person in  
263 a petition under subsection 6 of this section, shall be treated as  
264 confidential and proprietary and shall not be made public or otherwise  
265 disclosed by the attorney general or any other person without the  
266 written consent of the petitioners to whom the information pertains.

267 10. (1) A carrier identified in an application approved by the  
268 attorney general under subsection 6 of this section shall not refuse to  
269 meet at reasonable times and confer in good faith with a joint  
270 negotiation representative authorized to conduct negotiations with the  
271 identified carrier, but such obligation does not compel either party to  
272 agree to a proposal or require the making of a concession.

273 (2) If a carrier fails to comply with the obligations set forth in  
274 subdivision (1) of this subsection, the joint negotiation representative  
275 may petition a court of competent jurisdiction for an order to require  
276 the carrier to meet at reasonable times and negotiate in good  
277 faith. Upon issuance of such an order, the court may require the  
278 carrier to pay the costs of the proceedings, including attorneys' fees,  
279 incurred by the other party.

280 11. (1) The provisions of this section shall not be construed to:

281 (a) Permit two or more physicians to jointly engage in a  
282 coordinated cessation, reduction, or limitation of the health care  
283 services which they provide;

284 (b) Permit two or more physicians to meet or communicate in  
285 order to jointly negotiate a requirement that at least one of the  
286 physicians, as a condition of participation with a carrier, be allowed to  
287 participate in all of the products offered by the carrier;

288 (c) Permit two or more physicians to jointly negotiate with a  
289 carrier to exclude, limit, or otherwise restrict a non-physician health  
290 care provider from participating in the carrier's health benefits plan  
291 based substantially on the fact that the health care provider is not a  
292 physician, unless that exclusion, limitation, or restriction is otherwise  
293 permitted by law;

294 (d) Prohibit or restrict activity by physicians that is sanctioned  
295 under federal or state law or subject such activity to the requirements  
296 of this section;

297 (e) Affect governmental approval of, or otherwise restrict  
298 activity by, physicians that is not prohibited under federal antitrust  
299 law; or

300 (f) Require approval of physician contract terms to the extent  
301 that the terms are exempt from state regulation under Section 514(a)  
302 of the "Employee Retirement Income Security Act of 1974", P.L. 93-406  
303 (29 U.S.C. s. I 144(a)).

304 (2) Prior to entering into negotiations with a carrier on behalf  
305 of two or more independent physicians over a contractual term or  
306 condition, a joint negotiation representative shall notify the physicians  
307 in writing of the provisions of this section and advise them as to the  
308 potential for legal action against physicians who violate federal  
309 antitrust law.

310 12. The attorney general, in consultation with the directors of  
311 the department of insurance and the department of health and senior  
312 services, shall report to the governor and the general assembly no later  
313 than August 28, 2009, on the implementation of this section. The report  
314 shall include the number of petitions submitted for approval to engage  
315 in joint negotiations and the outcome of the petitions and the  
316 negotiations, an assessment of the effect the joint negotiations provided  
317 for in this section has had in restoring the competitive balance in the

318 market for health care services and in protecting access to quality  
319 patient care, an assessment of the impact this section has had on health  
320 insurance premiums in the state, and such other information that the  
321 attorney general deems appropriate. The report shall also include the  
322 attorney general's recommendations as to whether the provisions of  
323 this section shall be expanded to include other types of health care  
324 professionals and facilities.

325       13. The attorney general, in consultation with the directors of  
326 the department of insurance and the department of health and senior  
327 services and chapter 536, RSMo, shall adopt rules and regulations to  
328 effectuate the purposes of this section. Any rule or portion of a rule, as  
329 that term is defined in section 536.010, RSMo, that is created under the  
330 authority delegated in this section shall become effective only if it  
331 complies with and is subject to all of the provisions of chapter 536,  
332 RSMo, and, if applicable, section 536.028, RSMo. This section and  
333 chapter 536, RSMo, are nonseverable and if any of the powers vested  
334 with the general assembly pursuant to chapter 536, RSMo, to review, to  
335 delay the effective date, or to disapprove and annul a rule are  
336 subsequently held unconstitutional, then the grant of rulemaking  
337 authority and any rule proposed or adopted after August 28, 2006, shall  
338 be invalid and void.

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